

AMENDED IN ASSEMBLY AUGUST 25, 2003

AMENDED IN ASSEMBLY JUNE 30, 2003

AMENDED IN SENATE MAY 14, 2003

AMENDED IN SENATE APRIL 28, 2003

**SENATE BILL**

**No. 727**

**Introduced by Senator Kuehl**

February 21, 2003

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An act to amend Sections ~~140.5, 1143, 2656, 4903 and 4904~~ of the *Labor Code*, and to amend Sections 140.5, 984, 1143, 2601, 2613, 2656, 2676, 2679, 2707.5, 2708, 2708.1, 2709, 2714, 3012, 3253, 3254, 3300, 3301, 3302, 3303, and 3305 of, to amend the heading of Chapter 7 (commencing with Section 3300) of Part 2 of Division 1 of, and to add Sections 3302.1, 3303.1, and 3306 to, the Unemployment Insurance Code, relating to disability compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 727, as amended, Kuehl. Unemployment and disability compensation: family temporary disability insurance.

Under existing law, the family temporary disability insurance program provides up to 6 weeks of wage replacement benefits to workers who take time off work to care for a seriously ill child, spouse, parent, domestic partner, or to bond with a new child. These benefits are payable for family temporary disability leaves that begin on and after July 1, 2004.

This bill would make conforming and clarifying changes in provisions relating to family temporary disability compensation.

Existing law also requires that an individual claiming disability benefits establish medical eligibility by filing a claim supported by a certificate of a treating physician or practitioner that establishes, among other things, the condition of the family member.

This bill would require that the Employment Development Department develop a certificate that the individual taking leave to care for a family member shall file, and require that the certificate be within the knowledge of the physician or practitioner and be based on a physical examination and documented medical history of the family member.

Existing law requires the Director of the Employment Development Department to assess a penalty against an individual who, with the intent to defraud, falsely certifies the medical condition of any person to obtain family temporary disability insurance benefits.

This bill would also apply certain existing unemployment insurance provisions to family disability insurance benefit provisions.

This bill would also define the disability benefit period for purposes of the family temporary disability insurance program, clarify the amount of benefits an individual is eligible to receive each full day under the program, and authorize the director to require the care recipient to submit to reasonable examinations, as provided.

*Existing law requires workers to pay contributions to the Disability Fund at the rate determined by the director, and authorizes the director to increase or decrease that rate, as specified, if the director determines an adjustment is necessary to reimburse the Disability Fund for disability benefits paid or to be paid, or to prevent the accumulation of funds in excess of those needed to maintain an adequate fund balance.*

*This bill would prohibit the director from decreasing the rate of worker contributions for the 2004, 2005, and 2006 calendar years, regardless of whether the director determines a decrease is necessary to prevent the accumulation of funds in excess of those needed to maintain the adequacy of the Disability Fund during program implementation.*

*Existing workers' compensation law authorizes the Workers' Compensation Appeals Board to determine and allow specified expenses as liens against any sum to be paid as compensation.*

*This bill would additionally allow as a lien, against any sum to be paid as compensation, the amount of family temporary disability insurance benefits that have been paid to an injured employee, as provided.*



Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. *Section 4903 of the Labor Code is amended to read:*

4903. The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i). If more than one lien is allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens ~~which~~ *that* may be allowed hereunder are as follows:

(a) A reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursements in connection therewith. No fee for legal services shall be awarded to any representative who is not an attorney, except with respect to those claims for compensation for which an application, pursuant to Section 5501, has been filed with the appeals board on or before December 31, 1991, or for which a disclosure form, pursuant to Section 4906, has been sent to the employer, or insurer or third-party administrator, if either is known, on or before December 31, 1991.

(b) The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Section 4600) and, to the extent the employee is entitled to reimbursement under Section 4621, medical-legal expenses as provided by Article 2.5 (commencing with Section 4620) of Chapter 2 of Part 2.

(c) The reasonable value of the living expenses of an injured employee or of his or her dependents, subsequent to the injury.

(d) The reasonable burial expenses of the deceased employee, not to exceed the amount provided for by Section 4701.

(e) The reasonable living expenses of the spouse or minor children of the injured employee, or both, subsequent to the date of the injury, where the employee has deserted or is neglecting his or her family. These expenses shall be allowed in the proportion that the appeals board deems proper, under application of the spouse, guardian of the minor children, or the assignee, pursuant

1 to subdivision (a) of Section 11477 of the Welfare and Institutions  
2 Code, of the spouse, a former spouse, or minor children. A  
3 collection received as a result of a lien against a workers'  
4 compensation award imposed pursuant to this subdivision for  
5 payment of child support ordered by a court shall be credited as  
6 provided in Section 695.221 of the Code of Civil Procedure.

7 (f) The amount of unemployment compensation disability  
8 benefits that have been paid under or pursuant to the  
9 Unemployment Insurance Code in those cases where, pending a  
10 determination under this division there was uncertainty whether  
11 the benefits were payable under the Unemployment Insurance  
12 Code or payable hereunder; provided, however, that any lien under  
13 this subdivision shall be allowed and paid as provided in Section  
14 4904.

15 (g) The amount of unemployment compensation benefits and  
16 extended duration benefits paid to the injured employee for the  
17 same day or days for which he or she receives, or is entitled to  
18 receive, temporary total disability indemnity payments under this  
19 division; provided, however, that any lien under this subdivision  
20 shall be allowed and paid as provided in Section 4904.

21 (h) *The amount of family temporary disability insurance*  
22 *benefits that have been paid to the injured employee pursuant to*  
23 *the Unemployment Insurance Code for the same day or days for*  
24 *which that employee receives, or is entitled to receive, temporary*  
25 *total disability indemnity payments under this division, provided,*  
26 *however, that any lien under this subdivision shall be allowed and*  
27 *paid as provided in Section 4904.*

28 (i) The amount of indemnification granted by the California  
29 Victims of Crime Program pursuant to Article 1 (commencing  
30 with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title  
31 2 of the Government Code.

32 ~~(i)~~—

33 (j) The amount of compensation, including expenses of  
34 medical treatment, and recoverable costs that have been paid by  
35 the Asbestos Workers' Account pursuant to the provisions of  
36 Chapter 11 (commencing with Section 4401) of Part 1.

37 SEC. 2. *Section 4904 of the Labor Code is amended to read:*

38 4904. (a) If notice is given in writing to the insurer, or to the  
39 employer if uninsured, setting forth the nature and extent of any  
40 claim that is allowable as a lien, the claim is a lien against any

amount thereafter payable as compensation, subject to the determination of the amount and approval of the lien by the appeals board. When the Employment Development Department has served an insurer or employer with a lien claim, the insurer or employer shall notify the Employment Development Department, in writing, as soon as possible, but in no event later than 15 working days after commencing disability indemnity payments. When a lien has been served on an insurer or an employer by the Employment Development Department, the insurer or employer shall notify the Employment Development Department, in writing, within 10 working days of filing an application for adjudication, a stipulated award, or a compromise and release with the appeals board. ~~It~~

*(b) (1) In determining the amount of lien to be allowed for unemployment compensation disability benefits under subdivision (f) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days of disability for which an award of compensation for any permanent disability indemnity resulting solely from the same injury or illness or temporary disability indemnity, or both, is made and for which the employer has not reimbursed the Employment Development Department pursuant to Section 2629.1 of the Unemployment Insurance Code. It*

*(2) In determining the amount of lien to be allowed for unemployment compensation benefits and extended duration benefits under subdivision (g) of Section 4903, the appeals board shall allow the lien in the amount of benefits which it finds were paid for the same day or days for which an award of compensation for temporary total disability is made. It*

*(3) In determining the amount of lien to be allowed for family temporary disability insurance benefits under subdivision (h) of Section 4903, the appeals board shall allow the lien in the amount of benefits that it finds were paid for the same day or days for which an award of compensation for temporary total disability is made and for which the employer has not reimbursed the Employment Development Department pursuant to Section 2629.1 of the Unemployment Insurance Code.*

*(c) In the case of agreements for the compromise and release of a disputed claim for compensation, the applicant and defendant may propose to the appeals board, as part of the compromise and*

1 release agreement, an amount out of the settlement to be paid to  
2 any lien claimant claiming under subdivision ~~(f) or (g)~~ (f), (g), or  
3 (h) of Section 4903. If the lien claimant objects to the amount  
4 proposed for payment of its lien under a compromise and release  
5 settlement or stipulation, the appeals board shall determine the  
6 extent of the lien claimant's entitlement to reimbursement on its  
7 lien and make and file findings on all facts involved in the  
8 controversy over this issue in accordance with Section 5313. The  
9 appeals board may approve a compromise and release agreement  
10 or stipulation which proposes the disallowance of a lien, in whole  
11 or in part, only where there is proof of service upon the lien  
12 claimant by the defendant, not less than 15 days prior to the appeals  
13 board action, of all medical and rehabilitation documents and a  
14 copy of the proposed compromise and release agreement or  
15 stipulation. The determination of the appeals board, subject to  
16 petition for reconsideration and to the right of judicial review, as  
17 to the amount of lien allowed under subdivision ~~(f) or (g)~~ (f), (g),  
18 or (h) of Section 4903, whether in connection with an award of  
19 compensation or the approval of a compromise and release  
20 agreement, shall be binding on the lien claimant, the applicant, and  
21 the defendant, insofar as the right to benefits paid under the  
22 Unemployment Insurance Code for which the lien was claimed.  
23 The appeals board may order the amount of any lien claim, as  
24 determined and allowed by it, to be paid directly to the person  
25 entitled, either in a lump sum or in installments.

26 ~~Where~~

27 (d) *Where* unemployment compensation disability benefits,  
28 *including family temporary disability insurance benefits*, have  
29 been paid pursuant to the Unemployment Insurance Code while  
30 reconsideration of an order, decision, or award is pending, or has  
31 been granted, the appeals board shall determine and allow a final  
32 amount on the lien as of the date the board is ready to issue its  
33 decision denying a petition for reconsideration or affirming,  
34 rescinding, altering or amending the original findings, order,  
35 decision, or award.

36 ~~The~~

37 (e) *The* appeals board ~~shall~~ may not be prohibited from  
38 approving a compromise and release agreement on all other issues  
39 and deferring to subsequent proceedings the determination of a  
40 lien claimant's entitlement to reimbursement if the defendant in

1 any of these proceedings agrees to pay the amount subsequently  
2 determined to be due under the lien claim.

3 *SEC. 3.* Section 140.5 of the Unemployment Insurance Code  
4 is amended to read:

5 140.5. “Unemployment compensation disability benefits” or  
6 “disability benefits” refers to money payments payable under Part  
7 2 (commencing with Section 2601) to either of the following:

8 (a) An eligible unemployed individual with respect to his or her  
9 wage losses due to unemployment as a result of illness or other  
10 disability, resulting in that individual being unavailable or unable  
11 to work.

12 (b) An eligible individual with respect to his or her wage losses  
13 who is unable to work due to caring for a seriously ill or injured  
14 family member or bonding with a minor child within one year of  
15 the birth or placement of the child in connection with foster care  
16 or adoption.

17 ~~*SEC. 2.—*~~

18 *SEC. 4.* Section 984 of the Unemployment Insurance Code, as  
19 amended by Section 1 of Chapter 901 of the Statutes of 2002, is  
20 amended to read:

21 984. (a) (1) Each worker shall pay worker contributions at  
22 the rate determined by the director pursuant to this section with  
23 respect to wages, as defined by Sections 926, 927, and 985. On or  
24 before October 31 of each calendar year, the director shall prepare  
25 a statement, which shall be a public record, declaring the rate of  
26 worker contributions for the calendar year and shall notify  
27 promptly all employers of employees covered for disability  
28 insurance of the rate.

29 (2) (A) Except as provided in paragraph (3), the rate of worker  
30 contributions for calendar year 1987 and for each subsequent  
31 calendar year shall be 1.45 times the amount disbursed from the  
32 Disability Fund during the 12-month period ending September 30  
33 and immediately preceding the calendar year for which the rate is  
34 to be effective, less the amount in the Disability Fund on that  
35 September 30, with the resulting figure divided by total wages paid  
36 pursuant to Sections 926, 927, and 985 during the same 12-month  
37 period, and then rounded to the nearest one-tenth of 1 percent.

38 (B) The director shall increase the rate of worker contributions  
39 by .08 percent for the 2004 and 2005 calendar years to cover the



1 initial cost of family temporary disability insurance benefits  
2 provided in Chapter 7 (commencing with Section 3300) of Part 2.

3 (3) The rate of worker contributions shall not exceed 1.5  
4 percent or be less than 0.1 percent. The rate of worker  
5 contributions shall not decrease from the rate in the previous year  
6 by more than two-tenths of 1 percent.

7 (b) Worker contributions required under Sections 708 and  
8 708.5 shall be at a rate determined by the director to reimburse the  
9 Disability Fund for unemployment compensation disability  
10 benefits paid and estimated to be paid to all employers and  
11 self-employed individuals covered by those sections. On or before  
12 November 30th of each calendar year, the director shall prepare a  
13 statement, which shall be a public record, declaring the rate of  
14 contributions for the succeeding calendar year for all employers  
15 and self-employed individuals covered under Sections 708 and  
16 708.5 and shall notify promptly the employers and self-employed  
17 individuals of the rate. The rate shall be determined by dividing the  
18 estimated benefits and administrative costs paid in the prior year  
19 by the product of the annual remuneration deemed to have been  
20 received under Sections 708 and 708.5 and the estimated number  
21 of persons who were covered at any time in the prior year. The  
22 resulting rate shall be rounded to the next higher one-hundredth  
23 percentage point. The rate may also be reduced or increased by a  
24 factor estimated to maintain as nearly as practicable a cumulative  
25 zero balance in the funds contributed pursuant to Sections 708 and  
26 708.5. Estimates made pursuant to this subdivision may be made  
27 on the basis of statistical sampling, or another method determined  
28 by the director.

29 (c) The director's action in determining a rate under this section  
30 shall not constitute an authorized regulation.

31 (d) (1) Notwithstanding subdivision (a), *and except as*  
32 *provided in paragraph (2)*, the director may, at his or her  
33 discretion, increase or decrease, by not to exceed 0.1 percent, the  
34 rate of worker contributions determined pursuant to subdivision  
35 (a), up to a maximum worker contribution rate of 1.5 percent, if  
36 he or she determines the adjustment is necessary to reimburse the  
37 Disability Fund for disability benefits paid or estimated to be paid  
38 to individuals covered by this section or to prevent the  
39 accumulation of funds in excess of those needed to maintain an  
40 adequate fund balance.





(2) *Notwithstanding paragraph (1), for the 2004, 2005, and 2006 calendar years, the director may not decrease the rate of worker contributions, regardless of whether the director determines that a decrease is necessary to prevent the accumulation of funds in excess of those needed to maintain the adequacy of the Disability Fund during program implementation.*

SEC. 5. Section 1143 of the Unemployment Insurance Code is amended to read:

1143. If the director finds that any individual falsely certifies the medical condition of any person in order to obtain disability insurance benefits, including family temporary disability insurance benefits, with the intent to defraud, whether for the maker or for any other person, the director shall assess a penalty against the individual in the amount of 25 percent of the benefits paid as a result of the false certification. The provisions of this article, the provisions of Article 9 (commencing with Section 1176) with respect to refunds, and the provisions of Chapter 7 (commencing with Section 1701) with respect to collections shall apply to the assessments provided by this section. Penalties collected under this section shall be deposited in the contingent fund.

~~SEC. 3.—~~

SEC. 6. *Section 2601 of the Unemployment Insurance Code, as amended by Section 2 of Chapter 901 of the Statutes of 2002, is amended to read:*

2601. The purpose of this part is to compensate in part for the wage loss sustained by any individual who is unable to work due to the employee's own sickness or injury, the sickness or injury of a family member, or the birth, adoption, or foster care placement of a new child, and to reduce to a minimum the suffering caused by unemployment resulting therefrom. This part shall be construed liberally in aid of its declared purpose to mitigate the evils and burdens ~~which~~ *that* fall on the unemployed ~~and disabled~~ worker and his or her family.

SEC. 7. *Section 2613 of the Unemployment Insurance Code, as amended by Section 3 of Chapter 901 of the Statutes of 2002, is amended to read:*

2613. (a) The Director of Employment Development shall develop and maintain a program of education concerning disability insurance rights and benefits.

(b) The director shall provide to each employer of employees subject to this part a notice informing workers of their disability insurance rights and benefits due to sickness, injury, or pregnancy. The notice shall be given by every employer to each new employee hired on or after June 1, 1988, and to each employee leaving work due to pregnancy or nonoccupational sickness or injury on or after July 1, 1989.

(c) Commencing January 1, 2004, the director shall provide to each employer of employees subject to this part a notice informing workers of their disability insurance rights and benefits due to the employee's own sickness, injury, or pregnancy, or the employee's need to provide care for any sick or injured family member ~~or new child who is unable to care for himself or herself~~, *or the employee's need to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption. The notice shall also instruct the employee to provide notification of the reason for taking leave in a manner consistent with company policy.* The notice shall be given by every employer to each new employee hired on or after January 1, 2004, and to each employee leaving work on or after July 1, 2004, due to pregnancy, nonoccupational sickness or injury, or the need to provide care for any sick or injured family member ~~or new child who is unable to care for himself or herself~~, *or the need to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption.*

SEC. 8. Section 2656 of the Unemployment Insurance Code is amended to read:

2656. (a) An individual eligible to receive disability benefits who receives wages or regular wages from his or her employer during the period of his or her disability or period of family care leave shall be paid disability benefits for any seven-day week or partial week in an amount not to exceed his or her maximum weekly amount which together with the wages or regular wages does not exceed his or her weekly wage, exclusive of wages paid for overtime work, immediately prior to the commencement of his or her disability or period of family care leave.

(b) For purposes of this section, to determine the wages or regular wages received by the eligible individual, the amount as stated by the individual shall be presumed to be accurate. This presumption is one affecting the burden of producing evidence.

(c) Except as provided in subdivision (g) of Section 3303, for purposes of periods of disability commencing on or after January 1, 1992, vacation pay is not considered wages for determining eligibility for disability benefits.

~~SEC. 4.—~~

*SEC. 9. Section 2676 of the Unemployment Insurance Code is amended to read:*

2676. An individual who is disqualified from receiving unemployment compensation benefits under Sections 1256, 1257, 1260, ~~1261~~ 1261, and 1263 shall be presumed to be ineligible to receive disability benefits under this part for the same period or periods unless he *or she* establishes to the satisfaction of the director that he *or she* is suffering a bona fide illness or injury *or claiming a period of family care leave* and the director finds that there is good cause for paying disability benefits.

*SEC. 10. Section 2679 of the Unemployment Insurance Code is amended to read:*

2679. Notwithstanding any other provision of law, an individual who is otherwise eligible shall not be disqualified for benefits under this part for the day on which he or she or a family member, as defined in Chapter 7 (commencing with Section 3300), for whom the individual is providing care, died.

~~SEC. 5.—~~

*SEC. 11. Section 2707.5 of the Unemployment Insurance Code is amended to read:*

2707.5. (a) The department may for good cause reconsider any determination provided for in this part prior to the filing of an appeal therefrom, or within 30 days after an appeal to an administrative law judge is filed. The department shall promptly notify the claimant of any reconsidered determination, and the claimant may appeal therefrom in the manner prescribed in Section 2707.2. The director shall be an interested party to any appeal.

(b) The department may for good cause reconsider any computation or recomputation provided for in this part within one year from the beginning date of the disability benefit period to which the notice of computation or recomputation relates, except that no recomputation may be considered with respect to any issue considered or under consideration in an appeal taken from a denial of recomputation. The department shall promptly notify the

1 claimant of the recomputation. The claimant may protest the  
2 accuracy of the recomputation as prescribed in Section 2707.4.

3 ~~SEC. 6.—~~

4 *SEC. 12.* Section 2708 of the Unemployment Insurance Code,  
5 as amended by Section 4 of Chapter 901 of the Statutes of 2002,  
6 is amended to read:

7 2708. (a) (1) In accordance with the director's authorized  
8 regulations, and except as provided in subdivision (c) and Sections  
9 2708.1 and 2709, a claimant shall establish medical eligibility for  
10 each uninterrupted period of disability by filing a first claim for  
11 disability benefits supported by the certificate of a treating  
12 physician or practitioner that establishes the sickness, injury, or  
13 pregnancy of the employee, or the condition of the family member  
14 that warrants the care of the employee. For subsequent periods of  
15 uninterrupted disability after the period covered by the initial  
16 certificate or any preceding continued claim, a claimant shall file  
17 a continued claim for those benefits supported by the certificate of  
18 a treating physician or practitioner. A certificate filed to establish  
19 medical eligibility for the employee's own sickness, injury, or  
20 pregnancy shall contain a diagnosis and diagnostic code  
21 prescribed in the International Classification of Diseases, or,  
22 where no diagnosis has yet been obtained, a detailed statement of  
23 symptoms.

24 (2) A certificate filed to establish medical eligibility of the  
25 employee's own sickness, injury, or pregnancy shall also contain  
26 a statement of medical facts including secondary diagnoses when  
27 applicable, within the physician's or practitioner's knowledge,  
28 based on a physical examination and a documented medical  
29 history of the claimant by the physician or practitioner, indicating  
30 the physician's or practitioner's conclusion as to the claimant's  
31 disability, and a statement of the physician's or practitioner's  
32 opinion as to the expected duration of the disability.

33 (b) An employee shall be required to file a certificate to  
34 establish eligibility when taking leave to care for a family member  
35 with a serious health condition. The certificate shall be developed  
36 by the department. In order to establish medical eligibility of the  
37 serious health condition of the family member that warrants the  
38 care of the employee, the information shall be within the  
39 physician's or practitioner's knowledge and shall be based on a

physical examination and documented medical history of the family member and shall contain all of the following:

(1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) The date, if known, on which the condition commenced.

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician or practitioner believes the employee is needed to care for the child, parent, spouse, or domestic partner.

(5) (A) A statement that the serious health condition warrants the participation of the employee to provide care for his or her child, parent, spouse, or domestic partner.

(B) “Warrants the participation of the employee” includes, but is not limited to, providing psychological comfort, and arranging “third party” care for the child, parent, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

(c) The department shall develop a certification form for bonding that is separate and distinct from the certificate required in subdivision (a) for an employee taking leave ~~for reason of the birth of a child of the employee or the employee’s domestic partner, or the placement of a minor child with the employee in connection with the adoption or foster care of the child by the employee or domestic partner.~~ *to bond with a minor child within the first year of the child’s birth or placement in connection with foster care or adoption.*

(d) The first and any continuing claim of an individual who obtains care and treatment outside this state shall be supported by a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate with the investigation. A physician or practitioner licensed by and practicing in a foreign country who has been

1 convicted of filing false claims with the department may not file  
2 a certificate in support of a claim for disability benefits for a period  
3 of five years.

4 (e) For purposes of this part:

5 (1) “Physician” has the same meaning as defined in Section  
6 3209.3 of the Labor Code.

7 (2) “Practitioner” means a person duly licensed or certified in  
8 California acting within the scope of his or her license or  
9 certification who is a dentist, podiatrist, or as to normal pregnancy  
10 or childbirth, a midwife, nurse midwife, or nurse practitioner.

11 (f) For a claimant who is hospitalized in or under the authority  
12 of a county hospital in this state, a certificate of initial and  
13 continuing medical disability, if any, shall satisfy the requirements  
14 of this section if the disability is shown by the claimant’s hospital  
15 chart, and the certificate is signed by the hospital’s registrar. For  
16 a claimant hospitalized in or under the care of a medical facility of  
17 the United States government, a certificate of initial and  
18 continuing medical disability, if any, shall satisfy the requirements  
19 of this section if the disability is shown by the claimant’s hospital  
20 chart, and the certificate is signed by a medical officer of the  
21 facility duly authorized to do so.

22 (g) Nothing in this section shall be construed to preclude the  
23 department from requesting additional medical evidence to  
24 supplement the first or any continued claim if the additional  
25 evidence can be procured without additional cost to the claimant.  
26 The department may require that the additional evidence include  
27 any or all of the following:

28 (1) Identification of diagnoses.

29 (2) Identification of symptoms.

30 (3) A statement setting forth the facts of the claimant’s  
31 disability. The statement shall be completed by any of the  
32 following individuals:

33 (A) The physician or practitioner treating the claimant.

34 (B) The registrar, authorized medical officer, or other duly  
35 authorized official of the hospital or health facility treating the  
36 claimant.

37 (C) An examining physician or other representative of the  
38 department.

39 ~~SEC. 7.~~—

1     *SEC. 13.* Section 2708.1 of the Unemployment Insurance  
2 Code is amended to read:

3     2708.1. (a) Except as provided in subdivision (b), where an  
4 individual is entitled to receive unemployment compensation  
5 disability benefits reduced by the amount of temporary workers'  
6 compensation received for any day under Section 2629, it shall not  
7 be necessary that he or she obtain a certificate of a physician as  
8 required by subdivision (a) of Section 2708 to receive the reduced  
9 amount of disability benefits for that day, provided that the  
10 claimant submits evidence to the department of receipt of  
11 temporary disability benefits under a workers' compensation law  
12 for that day.

13     (b) This section does not apply to Chapter 7 (commencing with  
14 Section 3300).

15     ~~SEC. 8.—~~

16     *SEC. 14.* Section 2709 of the Unemployment Insurance Code  
17 is amended to read:

18     2709. If any individual in good faith adheres to the teachings  
19 of any bona fide church, sect, denomination or organization and  
20 in accordance with its principles depends for healing entirely upon  
21 prayer or spiritual means, no medical examination shall be  
22 required, but in lieu thereof the director may accept the certificate  
23 of a duly authorized and accredited practitioner of that bona fide  
24 church, sect, denomination or organization as to the disability of  
25 the claimant, or the serious health condition of the family member  
26 that warrants the care of the individual, for purposes of Chapter 7  
27 (commencing with Section 3300) of Part 2, and the estimated  
28 duration of such disability, and no authorized regulation  
29 prescribing the manner of proof of illness, injury, or serious health  
30 condition shall discriminate against that individual.

31     ~~SEC. 9.—~~

32     *SEC. 15.* Section 2714 of the Unemployment Insurance Code  
33 is amended to read:

34     2714. All medical records of the department obtained under  
35 this part, except to the extent necessary for the proper  
36 administration of this part, or as provided elsewhere in law shall  
37 be confidential and shall not be published or be open to public  
38 inspection in any manner revealing the identity of the claimant or  
39 family member, or the nature or cause of his or her disability.



1 Medical records that are disclosed shall be disclosed only pursuant  
2 to Section 1095, and shall remain confidential.

3 ~~SEC. 10.~~

4 *SEC. 16.* Section 3012 of the Unemployment Insurance Code  
5 is amended to read:

6 3012. (a) Notwithstanding Section 13340 of the Government  
7 Code, all money in the Disability Fund is continuously  
8 appropriated for the purpose of providing disability benefits  
9 pursuant to this part, including the payment of refunds, credits, or  
10 judgments, and interest thereon, the payment of disability benefits  
11 to all eligible persons not covered exclusively by an approved  
12 voluntary plan, and the payment of the expenses of administration  
13 of this part and Section 17061 of the Revenue and Taxation Code  
14 by the department and the Franchise Tax Board. “Eligible  
15 persons” as used in this section, means those individuals who are  
16 covered by the Disability Fund at the time his or her disability  
17 benefit period commences, or whose employment has terminated  
18 or who is in noncovered employment at the time his or her  
19 disability benefit period commences, and who is otherwise eligible  
20 for benefits under this part.

21 (b) For the purpose of keeping a record of the payments to and  
22 the disbursements from the Disability Fund with respect to the  
23 payment of benefits to persons whose employment has terminated  
24 or who are in noncovered employment at the time his or her  
25 disability period commences, the director shall maintain the  
26 Unemployed Disabled Account in the Disability Fund. This  
27 account shall be credited with 12 percent of the product obtained  
28 by multiplying the rate of worker contributions as determined in  
29 Section 984, by the amount of the taxable wages paid to employees  
30 covered by voluntary plans for disability benefits for each calendar  
31 year. This account shall also be credited with an amount equal to  
32 12 percent of the product obtained by multiplying the rate of  
33 worker contributions, as determined in Section 984, by the amount  
34 of the taxable wages paid to employees covered by the Disability  
35 Fund for each calendar year. This account shall be charged each  
36 calendar year with disbursements from the Disability Fund for the  
37 payment of benefits and the additional administrative costs of the  
38 payment of benefits to persons whose employment has terminated  
39 or who are in noncovered employment at the time his or her  
40 disability benefit period commences.



~~SEC. 11.—~~

*SEC. 17.* Section 3253 of the Unemployment Insurance Code is amended to read:

3253. Except as provided in this part, an employee covered by an approved voluntary plan at the commencement of a disability benefit period shall not be entitled to benefits from the Disability Fund. Benefits payable to that employee shall be the liability of the approved voluntary plan under which the employee was covered at the commencement of the disability benefit period, regardless of any subsequent disabling condition which may occur during that disability benefit period. The Director of Employment Development shall prescribe authorized regulations to allow benefits to individuals simultaneously covered by one or more approved voluntary plans and the Disability Fund.

~~SEC. 12.—~~

*SEC. 18.* Section 3254 of the Unemployment Insurance Code, as amended by Section 5 of Chapter 901 of the Statutes of 2002, is amended to read:

3254. The Director of Employment Development shall approve any voluntary plan, except one filed pursuant to Section 3255, as to which he or she finds that there is at least one employee in employment and all of the following exist:

(a) The rights afforded to the covered employees are greater than those provided for in Chapter 2 (commencing with Section 2625), including those provided for in Chapter 7 (commencing with Section 3300).

(b) The plan has been made available to all of the employees of the employer employed in this state or to all employees at any one distinct, separate establishment maintained by the employer in this state. "Employees" as used in this subdivision includes those individuals in partial or other forms of short-time employment and employees not in employment as the Director of Employment Development shall prescribe by authorized regulations.

(c) A majority of the employees of the employer employed in this state or a majority of the employees employed at any one distinct, separate establishment maintained by the employer in this state have consented to the plan.

(d) If the plan provides for insurance the form of the insurance policies to be issued have been approved by the Insurance

1 Commissioner and are to be issued by an admitted disability  
2 insurer.

3 (e) The employer has consented to the plan and has agreed to  
4 make the payroll deductions required, if any, and transmit the  
5 proceeds to the plan insurer, if any.

6 (f) The plan provides for the inclusion of future employees.

7 (g) The plan will be in effect for a period of not less than one  
8 year and, thereafter, continuously unless the Director of  
9 Employment Development finds that the employer or a majority  
10 of its employees employed in this state covered by the plan have  
11 given notice of withdrawal from the plan. The notice shall be filed  
12 in writing with the Director of Employment Development and  
13 shall be effective only on the anniversary of the effective date of  
14 the plan next following the filing of the notice, but in any event not  
15 less than 30 days from the time of the filing of the notice; except  
16 that the plan may be withdrawn on the operative date of any law  
17 increasing the benefit amounts provided by Sections 2653 and  
18 2655 or the operative date of any change in the rate of worker  
19 contributions as determined by Section 984, if notice of the  
20 withdrawal from the plan is transmitted to the Director of  
21 Employment Development not less than 30 days prior to the  
22 operative date of that law or change. If the plan is not withdrawn  
23 on the 30 days' notice because of the enactment of a law increasing  
24 benefits or because of a change in the rate of worker contributions  
25 as determined by Section 984, the plan shall be amended to  
26 conform to that increase or change on the operative date of the  
27 increase or change.

28 (h) The amount of deductions from the wages of an employee  
29 in effect for any plan shall not be increased on other than an  
30 anniversary of the effective date of the plan except to the extent  
31 that any increase in the deductions from the wages of an employee  
32 allowed by Section 3260 permits that amount to exceed the amount  
33 of deductions in effect.

34 (i) The approval of the plan or plans will not result in a  
35 substantial selection of risks adverse to the Disability Fund.

36 ~~SEC. 13.—~~

37 *SEC. 19. The heading of Chapter 7 (commencing with Section*  
38 *3300) of Part 2 of Division 1 of the Unemployment Insurance Code*  
39 *is amended to read:*  
40

CHAPTER 7. PAID FAMILY CARE LEAVE

SEC. 20. Section 3300 of the Unemployment Insurance Code is amended to read:

3300. The Legislature finds and declares all of the following:

(a) It is in the public benefit to provide family temporary disability insurance benefits to workers to care for their family members. The need for family temporary disability insurance benefits has intensified as ~~both parent's~~ the participation of both parents in the workforce has increased, and the number of single parents in the workforce has grown. The need for partial wage replacement for workers taking family care leave will be exacerbated as the population of those needing care, both children and parents of workers, increases in relation to the number of working age adults.

(b) Family Temporary Disability Insurance shall be known as Paid Family Leave.

(c) Developing systems that help families adapt to the competing interests of work and home not only benefits workers, but also benefits employers by increasing worker productivity and reducing employee turnover.

~~(e)~~

(d) The federal Family and Medical Leave Act (FMLA) and California's Family Rights Act (CFRA) entitle eligible employees working for covered employers to take unpaid, job-protected leave for up to 12 workweeks in a 12-month period. Under the FMLA and the CFRA, unpaid leave may be taken for the birth, adoption, or foster placement of a new child; to care for a seriously ill child, parent, or spouse; or for the employee's own serious health condition.

~~(d)~~

(e) State disability insurance benefits currently provide wage replacement for workers who need time off due to their own non-work-related injuries, illnesses, or conditions, including pregnancy, that prevent them from working, but do not cover leave to care for a sick or injured child, spouse, parent, domestic partner, or leave to bond with a new child.

~~(e)~~

(f) The majority of workers in this state are unable to take family care leave because they are unable to afford leave without

1 pay. When workers do not receive some form of wage replacement  
2 during family care leave, families suffer from the worker's loss of  
3 income, increasing the demand on the state unemployment  
4 insurance system and dependence on the state's welfare system.

5 ~~(f)~~—

6 (g) It is the intent of the Legislature to create a family  
7 temporary disability insurance program to help reconcile the  
8 demands of work and family. The family temporary disability  
9 insurance program shall be a component of the state's  
10 unemployment compensation disability insurance program, shall  
11 be funded through employee contributions, and shall be  
12 administered in accordance with the policies of the state disability  
13 insurance program created pursuant to this part. Initial and  
14 ongoing administrative costs associated with the family temporary  
15 disability insurance program shall be payable from the Disability  
16 Fund.

17 *SEC. 21.* Section 3301 of the Unemployment Insurance Code  
18 is amended to read:

19 3301. (a) (1) The purpose of this chapter is to establish,  
20 within the state disability insurance program, a family temporary  
21 disability insurance program. Family temporary disability  
22 insurance shall provide up to six weeks of wage replacement  
23 benefits to workers who take time off work to care for a seriously  
24 ill child, spouse, parent, domestic partner, or to bond with a minor  
25 child within one year of the birth or placement of the child in  
26 connection with foster care or adoption.

27 (2) Nothing in this chapter shall be construed to abridge the  
28 rights and responsibilities conveyed under the CFRA or pregnancy  
29 disability leave.

30 (b) An individual's "weekly benefit amount" shall be the  
31 amount provided in Section 2655. An individual is eligible to  
32 receive family temporary disability insurance benefits equal to  
33 one-seventh of his or her weekly benefit amount for each full day  
34 during which he or she is unable to work due to caring for a  
35 seriously ill or injured family member or bonding with a minor  
36 child within one year of the birth or placement of the child in  
37 connection with foster care or adoption.

38 (c) The maximum amount payable to an individual during any  
39 disability benefit period for family temporary disability insurance  
40 shall be six times his or her "weekly benefit amount," but in no

case shall the total amount of benefits payable be more than the total wages paid to the individual during his or her disability base period. If the benefit is not a multiple of one dollar (\$1), it shall be computed to the next higher multiple of one dollar (\$1).

(d) No more than six weeks of family temporary disability insurance benefits shall be paid within any 12-month period.

(e) An individual shall file a claim for family temporary disability insurance benefits not later than the 41st consecutive day following the first compensable day with respect to which the claim is made for benefits, which time shall be extended by the department upon a showing of good cause. If a first claim is not complete, the claim form shall be returned to the claimant for completion and it shall be completed and returned not later than the 10th consecutive day after the date it was mailed by the department to the claimant, except that such time shall be extended by the department upon a showing of good cause.

~~SEC. 14.—~~

SEC. 22. Section 3302 of the Unemployment Insurance Code is amended to read:

3302. For purposes of this part:

(a) “Care recipient” means the family member ~~or child~~ who is receiving care for a serious health condition *or the new child with whom the care provider is bonding*.

(b) “Care provider” means the family member who is providing the required care *for a serious health condition or the family member who is bonding with the new child*.

(c) “Child” means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or the person to whom the employee stands in loco parentis.

(d) “Domestic partner” has the same meaning as defined in Section 297 of the Family Code.

(e) “Family care leave” means any of the following:

~~(1) Leave for reason of the birth of a child of the employee or the employee’s domestic partner, the placement of a minor child with an employee in connection with the adoption or foster care of the child by the employee or domestic partner, or the serious health condition of a child of the employee, spouse, or domestic partner.~~

1 (1) *Leave to bond with a minor child within the first year of the*  
2 *child's birth or placement in connection with foster care or*  
3 *adoption.*

4 (2) Leave to care for a *child*, parent, spouse, or domestic partner  
5 who has a serious health condition.

6 (f) "Family member" means child, parent, spouse, or domestic  
7 partner as defined in this section.

8 (g) "Parent" means a biological, foster, or adoptive parent, a  
9 stepparent, a legal guardian, or other person who stood in loco  
10 parentis to the employee when the employee was a child.

11 (h) "Serious health condition" means an illness, injury,  
12 impairment, or physical or mental condition that involves  
13 inpatient care in a hospital, hospice, or residential health care  
14 facility, or continuing treatment or continuing supervision by a  
15 health care provider, as defined in Section 12945.2 of the  
16 Government Code.

17 (i) "Spouse" means a partner to a lawful marriage.

18 (j) "Valid claim" means any claim for family temporary  
19 disability insurance benefits made in accordance with the  
20 provisions of this code, and any rules and regulations adopted  
21 thereunder, if the individual claiming benefits is unemployed and  
22 has been paid the necessary wages in employment for employers  
23 to qualify for benefits under Section 2652 and is caring for a  
24 seriously ill family member, or bonding with a minor child during  
25 the first year after the birth or placement of the child in connection  
26 with foster care or adoption.

27 (k) "Twelve-month period," with respect to any individual,  
28 means the 365 consecutive days that begin with the first day the  
29 individual first establishes a valid claim for family temporary  
30 disability benefits.

31 ~~SEC. 15.—~~

32 SEC. 23. Section 3302.1 is added to the Unemployment  
33 Insurance Code, to read:

34 3302.1. For purposes of this chapter:

35 (a) "Disability benefit period" with respect to any individual,  
36 means the period of unemployment beginning with the first day an  
37 individual establishes a valid claim for family temporary disability  
38 insurance benefits to care for a seriously ill family member, or to  
39 bond with a minor child during the first year after the birth or  
40 placement of the child in connection with foster care or adoption.



(b) Periods of family care leave for the same care recipient within a 12-month period shall be considered one disability benefit period.

(c) Periods of disability for ~~pregnancy and~~ *pregnancy, as defined in Section 2608, and periods of family care leave for* bonding associated with the birth of that child shall be considered one disability benefit period.

~~SEC. 16.—~~

*SEC. 24.* Section 3303 of the Unemployment Insurance Code is amended to read:

3303. ~~(a)~~—An individual shall be deemed eligible for family temporary disability insurance benefits *equal to one-seventh of his or her weekly benefit amount* on any day in which he or she is unable to perform his or her regular or customary work because he or she is bonding with a minor child during the first year after the birth or placement of the child in connection with foster care or adoption or caring for a seriously ill child, parent, spouse, or domestic partner, ~~subject to a waiting period of seven consecutive days during each family temporary disability benefit period, during which no benefits will be payable. only if the director finds~~ all of the following:

(a) *The individual has made a claim for temporary disability benefits as required by authorized regulations.*

(b) *The individual has been unable to perform his or her regular or customary work for a seven-day waiting period during each disability benefit period, with respect to which waiting period no family temporary disability insurance benefits are payable.*

(c) *The individual has filed a certificate, as required by Sections 2708 and 2709.*

~~(b)~~—An individual is not eligible for family temporary disability insurance benefits with respect to any day that he or she has received or is entitled to receive unemployment compensation benefits under Part 1 (commencing with Section 100) or under an unemployment compensation act of any other state or of the federal government.

~~(c)~~—An individual is not eligible for family temporary disability insurance benefits with respect to any day for which he or she has received, or is entitled to receive, “other benefits” in the form of cash benefits as defined in Section 2629.

~~(d) An individual is not eligible for family temporary disability insurance benefits with respect to any day that the individual has received or is entitled to receive state disability insurance benefits under Part 2 (commencing with Section 2601) or under a disability insurance act of any other state.~~

~~(e) An individual is not eligible for family temporary disability insurance benefits with respect to any day that another family member, as defined in Section 3302, is ready, willing, and able and available for the same period of time in a day that the individual is providing the required care.~~

~~(f) An individual who is entitled to leave under the FMLA and the CFRA must take Family Temporary Disability Insurance (FTDI) leave concurrent with leave taken under the FMLA and the CFRA.~~

~~(g) As a condition of an employee's initial receipt of family temporary disability insurance benefits during any 12-month period in which an employee is eligible for these benefits, an employer may require an employee to take up to two weeks of earned but unused vacation leave prior to the employee's initial receipt of these benefits. If an employer so requires an employee to take vacation leave, that portion of the vacation leave that does not exceed one week shall be applied to the waiting period required under subdivision (a). This subdivision may not be construed in a manner that relieves an employer of any duty of collective bargaining the employer may have with respect to the subject matter of this subdivision.~~

~~SEC. 17.—~~

*SEC. 25. Section 3303.1 is added to the Unemployment Insurance Code, to read:*

*3303.1. (a) An individual is not eligible for family temporary disability insurance benefits with respect to any day that any of the following apply:*

*(1) The individual has received, or is entitled to receive, unemployment compensation benefits under Part 1 (commencing with Section 100) or under an unemployment compensation act of any other state or of the federal government.*

*(2) The individual has received, or is entitled to receive, 'other benefits' in the form of cash benefits as defined in Section 2629.*

*(3) The individual has received, or is entitled to receive, state disability insurance benefits under Part 2 (commencing with*

1 *Section 2601) or under a disability insurance act of any other*  
 2 *state.*

3 *(4) Another family member, as defined in Section 3302, is*  
 4 *ready, willing, and able and available for the same period of time*  
 5 *in a day that the individual is providing the required care.*

6 *(b) An individual who is entitled to leave under the FMLA and*  
 7 *the CFRA must take Family Temporary Disability Insurance*  
 8 *(FTDI) leave concurrent with leave taken under the FMLA and the*  
 9 *CFRA.*

10 *(c) As a condition of an employee's initial receipt of family*  
 11 *temporary disability insurance benefits during any 12-month*  
 12 *period in which an employee is eligible for these benefits, an*  
 13 *employer may require an employee to take up to two weeks of*  
 14 *earned but unused vacation leave prior to the employee's initial*  
 15 *receipt of these benefits. If an employer so requires an employee*  
 16 *to take vacation leave, that portion of the vacation leave that does*  
 17 *not exceed one week shall be applied to the waiting period required*  
 18 *under subdivision (b) of Section 3303. This subdivision may not be*  
 19 *construed in a manner that relieves an employer of any duty of*  
 20 *collective bargaining the employer may have with respect to the*  
 21 *subject matter of this subdivision.*

22 *SEC. 26. Section 3305 of the Unemployment Insurance Code*  
 23 *is amended to read:*

24 *3305. If the director finds that any individual falsely certifies*  
 25 *the medical condition of any person in order to obtain family*  
 26 *temporary disability insurance benefits, with the intent to defraud,*  
 27 *whether for the maker or for any other person, the director shall*  
 28 *assess a penalty against the individual in the amount of 25 percent*  
 29 *of the benefits paid as a result of the false certification. The*  
 30 *provisions of Article 8 (commencing with Section 1126) of*  
 31 *Chapter 4 of Part 1, with respect to assessments the provisions of*  
 32 *Article 9 (commencing with Section 1176) of Chapter 4 of Part 1,*  
 33 *with respect to refunds, and the provisions of Chapter 7*  
 34 *(commencing with Section 1701) of Part 1, with respect to*  
 35 *collections shall apply to the assessments provided by this section.*  
 36 *Penalties collected under this section shall be deposited in the*  
 37 *contingent fund.*

38 ~~*SEC. 18.—*~~

39 *SEC. 27. Section 3306 is added to the Unemployment*  
 40 *Insurance Code, to read:*

1 3306. (a) The director may request additional medical  
2 evidence to supplement the first or any continued claim if the  
3 additional evidence can be procured without additional cost to the  
4 care recipient. The director may require that the additional  
5 evidence include any or all of the following information:

6 (1) Identification of diagnoses.

7 (2) Identification of symptoms.

8 (3) A statement setting forth the facts of the care recipient's  
9 serious health condition that warrants the participation of the  
10 employee. The statement shall be completed by any of the  
11 following people:

12 (A) The physician or practitioner treating the care recipient.

13 (B) The registrar, authorized medical officer, or other duly  
14 authorized official of the hospital or health facility treating the care  
15 recipient.

16 (C) An examining physician or other representative of the  
17 department.

18 (b) Except as provided in Section 2709, the director may  
19 require the care recipient to submit to reasonable examinations for  
20 the purpose of determining all of the following:

21 (1) Whether a serious health condition exists.

22 (2) Whether a care provider's participation is warranted.

23 (3) The period of time that the care provider's participation is  
24 warranted.

25 ~~SEC. 19.~~—

26 SEC. 28. This act shall become operative on January 1, 2004,  
27 except that benefits shall be payable for family temporary  
28 disability insurance claims commencing on or after July 1, 2004.